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February 5, 2007

DELIVERY VIA FAX to (801) 539-4230 and (801) 539-4237

Bureau of Land Management  
Utah State Office  
Information Access Center  
3 Gateway Building  
440 West 200 Street  
Salt Lake City, Utah

Mr. Kent Hoffman  
Deputy State Director  
Bureau of Land Management  
Utah State Office  
3 Gateway Building  
440 West 200 Street  
Salt Lake City, Utah

Re: Competitive Oil and Gas Lease Sale Scheduled for February 20,  
2007/Protest of Inclusion of Parcels UTU0207-124, UTU0207-125 &  
UTU0207-126 (the "Subject Parcels")

Gentlemen:

This firm represents Vessels Coal Gas, Inc. ("Vessels"). Vessels holds private oil and gas leases adjacent to the above referenced Subject Parcels. Pursuant to agreements with surface owners, Vessels also has rights and interests in and to the surface of certain lands situated both within and adjacent to the Subject Parcels. Such lands, leases and agreements are identified in Exhibit A, appended hereto and incorporated herein. Vessels' interests in these lands would be harmed by the inclusion of the Subject Parcels in the competitive oil and gas lease sale scheduled for February 20, 2007 (the "Proposed Sale") on the terms and conditions specified therefor. Accordingly, Vessels hereby protests the inclusion of the Subject Parcels in the Proposed Sale.

*I. Several of the Special Stipulations Specified for the Proposed O & G Leases (i) Are not Necessary to Protect Coal Operations, (ii) Serve to Ensure that Only*

***One Particular Party Will be Able to Bid Effectively on the Proposed O&G Leases, (iii) Are Anti-Competitive and Inconsistent with the Objectives, Intent and Requirements of the Mineral Leasing Act of 1920, and (iv) Would Constitute an Improper, Illegal and Unwise Delegation of BLM Regulatory Authority to a Private For-Profit Company.***

Pursuant to the Mineral Leasing Act of 1920 (the "MLA"), the Proposed Sale must be held on a competitive basis, without advantage or preference being given to any prospective bidder. However, as a result of the unique lease stipulations formulated for the proposed oil and gas leases covering the Subject Parcels (the "Proposed O&G Leases") only one entity will, as a practical matter, be in a position to acquire the leases. Such an arrangement is anti-competitive and violates the purposes, intent and requirements of the MLA.

Portions of each of the Subject Parcels are situated within the boundaries of federal coal leases held by Andalex Resources, Inc./UtahAmerican Energy, Inc. ("UtahAmerican") in connection with its operation of the Aberdeen underground coal mine (the "Aberdeen Mine"). The Proposed O&G Leases are for mine vent gas only and are subject to certain stipulations, including those set forth in UT-S-143 (the "Special Stipulations"). The Special Stipulations state, in pertinent part and with emphasis added, the following:

1. This lease is issued granting the exclusive right for the surface capture of ventilated mine gas, known also as mine vent gas, from the Aberdeen Coal Mine, Carbon County, Utah and for no other purpose... The lessee shall have the right to remove, utilize, and dispose of all the mine vent gas gathered at the discharge point of the wells drilled and constructed by the mining company, to transport the mine vent gas from the discharge point through the lessee's gathering system... and to sell the marketable products.
2. This lease does not grant the right to drill for, mine, extract, remove and dispose of all the oil and gas (including helium) in all the lands herein described.
3. *This lease shall be issued and become effective only under the completion of an explicit agreement with the mine operators.*
4. *This lease shall not be issued for a specific period of time but shall remain in force solely at the discretion of the mining company.*
5. *Mine vent gas venting is solely at the discretion of the Aberdeen mine operator and may be stopped or altered at any time for mine safety, maintenance... or any other purpose deemed necessary to mine operation.*



9. This lease is subject to valid existing rights to mine and extract the coal...
10. BLM will not approve any oil and gas operations which interfere with the coal mining in the lands described herein.

OSO Oil & Gas Properties, Inc. ("OSO"), like Vessels, holds oil and gas leases covering certain lands that encompass underground mine panels and workings of the Aberdeen Mine. Unlike Vessels, it appears that OSO has an arrangement or agreement with UtahAmerican that allows OSO to capture, produce and sell mine vent gas from the Aberdeen Mine. Vessels has not been able to enter into such an arrangement with UtahAmerican. Vessels contacted UtahAmerican in October, 2006 and enquired about the possibility of entering into a cooperative agreement that would allow Vessels to participate in the capture, production and sale of mine vent gas. UtahAmerican replied that it "is supportive of the effects of OSO to capture this gas" and encouraged Vessels "to work with OSO." Although Vessels has engaged in negotiations with OSO, it has not been able to reach an agreement that would allow Vessels to participate in the production of mine vent gas.

As a practical matter, the Special Stipulations will make OSO the only entity capable of bidding on the Proposed Leases. Only OSO, and not any other prospective bidder, has an arrangement or agreement with UtahAmerican that allows it to capture, produce and sell mine vent gas. Only OSO, and not any other prospective bidder, knows the terms and conditions on which UtahAmerican will allow an oil and gas lessee to produce coal mine vent gas. Only OSO, and not any other prospective bidder, knows whether or not UtahAmerican will demand to receive a share of the revenues generated by the sale of mine vent gas and, if so, the percentage size of such revenue sharing. Only OSO, and not any other prospective bidder, knows the limitations and restrictions that UtahAmerican will place upon oil and gas operations. Finally, only OSO, and not any other prospective bidder, knows that UtahAmerican will enter into an agreement that will allow it to operate.

Special Stipulation 3 states that the "lease shall be issued and become effective only under [upon] the completion of an explicit agreement with the mine operations." OSO apparently already has such an agreement or arrangement with UtahAmerican. No other prospective bidder currently has such an agreement, knows whether it can successfully negotiate such an agreement with UtahAmerican, or understands what the terms and conditions of such an agreement may entail.

Similarly, Special Stipulation 4 states that the "lease shall not be issued for a specific period of time but shall remain in force solely at the discretion of the mining company." Only OSO has a relationship and arrangement with UtahAmerican that would preclude UtahAmerican from terminating the Proposed O&G Leases prematurely or that defines or limits the circumstances in which UtahAmerican may terminate the Proposed O&G Leases.



Special Stipulation 5 states that "[m]ine gas venting is solely at the discretion of the Aberdeen mine operator and may be stopped or altered at any time for mine safety, maintenance of the ventilation system or for any other purpose deemed necessary to mine operators." Only OSO has a relationship and arrangement with UtahAmerican that affords it an understanding of UtahAmerican's schedule, plans and intentions with respect to ventilation system maintenance and of UtahAmerican's mine safety program and policies. Only OSO has an arrangement with UtahAmerican that provides it with an understanding and certainty as to the circumstances in which UtahAmerican might require the cessation or alteration of oil and gas operations.

Clearly, as a result of the Special Stipulations, no party other than OSO will be in a position to bid effectively on the Proposed Leases. How could a prospective bidder (other than OSO) justify making a material bonus bid and paying a material bonus payment when it does not know whether or not it will be able to reach an agreement with UtahAmerican that will allow it to operate? Even if prospective bidders (other than OSO) were willing to make the large leap of faith that they will be able to negotiate an agreement with UtahAmerican allowing them to operate, they do not know the terms and conditions that UtahAmerican will insist upon including in such an agreement. Prospective bidders (other than OSO) do not know whether UtahAmerican will insist upon receiving a share of the revenues derived from the production of mine vent gas or the magnitude of such revenue sharing. Without such information, prospective bidders (other than OSO) cannot calculate or even estimate the potential profitability of oil and gas operations and, in turn, cannot formulate or rationalize an appropriate bonus bid based upon applicable economics. Similarly, prospective bidders (other than OSO) do not know the circumstances in which UtahAmerican might insist upon stopping or altering oil and gas operations. Accordingly, they cannot effectively consider the potential impact of such cessations or alterations of operations upon project economics and, in turn, cannot factor such economic impacts into the calculation of an appropriate bonus bid. Finally, pursuant to Special Stipulation 4, prospective bidders (other than OSO) have no assurance as to whether or when UtahAmerican might declare the Proposed O&G Leases terminated.

In short, prospective bidders (other than OSO) do not know (i) whether UtahAmerican will allow oil and gas operations ever to commence, (ii) the terms and conditions, potentially including significant payments to UtahAmerican, under which they will be allowed to operate, or (iii) when UtahAmerican might insist upon the cessation, alteration or permanent termination of oil and gas operations. Accordingly, as a result of the Special Stipulations, only OSO will be in a position to bid effectively on the Proposed O&G Leases.

We also note that the Special Stipulations that result in these undue, unfair and inappropriate advantages to one particular bidder are entirely unnecessary. Special Stipulation 10 states that the "BLM will not approve any oil and gas operations which interfere with the coal mining in the lands described herein." This stipulation, on its own or enlarged somewhat, is sufficient to protect coal operations. Under the circumstances of the Proposed O&G Leases, it may be appropriate for the BLM to decide, after



consultations with the coal operator, when oil and gas operations might interfere with or adversely impact coal operations and, accordingly, either decline to approve proposed oil and gas activities or to require the temporary or permanent cessation or alteration of oil and gas operations. Such stipulations, like Special Stipulation 10, sufficiently protect the legitimate interests of the coal operator and place all prospective bidders in an equal position and on a level playing field. Such an approach ensures the coal operator that its interests and operations will be protected in all respects, but does not (i) unduly advantage one particular prospective bidder that already has an agreement or arrangement in place with the coal operator, and (ii) unnecessarily create myriad and material uncertainties and contingencies that effectively prevent all parties, other than OSO, from participating in the bidding process for the Proposed O&G Leases.

Special Stipulations that require an express written agreement with the mine operator, without specifying the applicable terms, conditions, scope and purview of such an agreement, and that afford the mine operator an unfettered, unlimited and unregulated right to curtail or alter oil and gas operations are not only unnecessary to protect the legitimate interests of the coal operator, they also create an unprecedented, inappropriate and dangerous delegation of BLM authority to a private party with its own interests and agenda. The BLM, and not the coal operator, should decide which interested oil and gas operator will have the right to produce the mine vent gas. The BLM, and not the coal operator, should decide whether or not oil and gas operations will interfere with or adversely affect mine operations and whether or not such oil and gas operations should be permitted, altered or discontinued. The BLM, and not the coal operator, should determine whether or not the oil and gas operator must share its revenues, derived from the production of federal mine vent gas, with the coal operator and, if so, the appropriate sharing percentages.

By abdicating and delegating its regulatory role and authority to a private party, the BLM is inviting the possibility of abuse. Having paid its bonus bid for the Proposed Leases, the oil and gas lessee will not be able to commence its operations without first entering into a written agreement with the coal operator. The terms, conditions, scope and purview of such an agreement are completely undefined and unbounded by the Special Stipulations. The successful bidder will be totally at the mercy, whim and desire of the coal operator, which is a private for-profit entity. The coal operator will be in a position to insist upon virtually any terms and conditions, including without limitation payments to it by the oil and gas lessee or the sharing of oil and gas revenues. If the oil and gas lessee wants to produce and sell gas from the Proposed Leases, it will have no choice but to acquiesce to such demands.

Similarly, the Special Stipulations would allow the coal operator, in its unlimited discretion, to declare the Proposed Leases terminated. This unlimited delegation of authority would empower the coal operator to demand and receive any number of inappropriate concessions from the federal oil and gas lessee, including without limitation cash payments. The oil and gas lessee would have to agree to such concessions or be prepared to forfeit its investment in the Proposed O&G Leases.



For these reasons, it is improper, unnecessary and imprudent for the BLM to abdicate and delegate its regulatory responsibilities to the private coal operator, as contemplated by the Special Stipulations. The BLM must remain engaged to discharge its responsibilities and determine when and where oil and gas activities may be permitted and when and where they must be discontinued, terminated or altered in order to protect coal operations. In making such determinations, the BLM could certainly consult with the coal operator to ensure a proper understanding of potential problems, issues and impacts from the coal operator's perspective and to tap into the coal operator's expertise and experience. However, the BLM must make the ultimate decisions as to whether, where and when oil and gas operations will be permitted and allowed to continue. The BLM has been charged with such administrative responsibilities and only it can ensure that such responsibilities are discharged in an appropriate and fair way, with the proper motives and in a manner consistent with the public interest. An unlimited abdication and delegation of such authority to a private party, which may exercise such authority in any manner it chooses, would be improper, illegal, unprecedented and unwise.

In summary, several of the Special Stipulations (i) are not necessary to ensure the protection of coal operations and the legitimate interest of UtahAmerican, (ii) serve, as a practical matter, to ensure that only OSO will be able to bid effectively upon the Proposed O&G Leases, notwithstanding the requirement that the Proposed Sale must be a "competitive" lease sale under the MLA, and (iii) would constitute an unprecedented, improper, illegal and unwise delegation of BLM regulatory authority to a private for-profit entity, which delegation would not be in the public interest. We do not know the process by which such Special Stipulations were formulated, but we suspect that UtahAmerican and OSO (perhaps acting through UtahAmerican) provided their own input. We respectfully suggest and request that the Subject Parcels be omitted from the Proposed Sale at the present time, that the BLM carefully reconsider the Special Stipulations and that the BLM formulate revised stipulations that will: (i) maintain the BLM's regulatory authority and oversight over the coal and oil and gas operations, (ii) allow all prospective bidders to participate effectively and on an equal footing in a lease sale, rather than ensuring the success of one particular party and (iii) result in a competitive lease sale consistent with the objectives, intent and requirements of the MLA.

## ***II. The Special Stipulations Improperly Exempt the Oil and Gas Lessee From the Need to Subscribe to a Cooperative or Unit Plan When in the Public Interest.***

Special Stipulation 6 states that "the lessee shall not be bound by the diligence and drainage requirements of section 4 of this lease because lease rights do not extend to the oil or gas in or under the lands herein described." Section 4 of the standard federal oil and gas lease form states, in pertinent part, that:

Lessor reserves the right... to require lessee to subscribe to a cooperative or unit plan, within 30 days of notice, if deemed necessary for proper development of area, field, or pool embracing these leased lands.



As noted previously, Vessels owns oil and gas leases on lands encompassed within the Aberdeen Mine. The underground mine panels and workings of the Aberdeen Mine extend within the lands leased by Vessels, just as such underground mine panels and workings extend or will extend within the Subject Parcels.

Coal is a porous substance. Methane will migrate through coal over substantial distances to reach a point of lower pressure, such as mine workings or ventilation shafts. Such gas migration is exacerbated and magnified exponentially when more panels are created and mine ventilation is utilized. In view of the fact that the mine panels for the Aberdeen Mine extend within the lands leased by Vessels and extend or will extend within the Subject Parcels, there can be little doubt that gas produced from Gob Vents on the Subject Parcels will capture gas migrating and drained from the lands leased by Vessels. Vessels is the only party entitled to produce gas from its leases.

In view of this situation, it may be appropriate, in the future, for the BLM to require the oil and gas lessee for the Subject Parcels to subscribe to a cooperative or unit plan governing the production of methane in the area. However, Special Stipulation 6 inexplicably strips the BLM of its regulatory authority to require the lessee to enter into such a cooperative or unit plan.

As an explanation for this exemption, Special Stipulation 6 incorrectly states that the "lease rights do not extend to the oil or gas in or under the lands herein described." While the Proposed O&G Leases allow the production of gas only from Gob Vents, the lease rights most certainly extend to all methane and other gases in or under the Subject Parcels that enter the mine workings and that can be produced by such method.

In fact, because of the ability of methane to migrate through coal, the geographically vast coverage of the underground mine panels and mine workings associated with the Aberdeen Mine and the mine operator's use of ventilation systems to force gas to flow to and out of Gob Vents, drainage of gas from surrounding lands will be more prevalent in the present case than in most situations. Given these circumstances, it may be important for the BLM to maintain its authority to compel the oil and gas lessee for the Subject Parcels to enter into a cooperative or unit agreement covering surrounding lands. However, Special Stipulation 6 improperly and inappropriately precludes the BLM from exercising such standard regulatory authority.

### ***III. Special Stipulation 6 Improperly Exempts the Lessee from Bonding Requirements.***

Special Stipulation 6 states that:

[b]ecause the lessee does not have the right to drill a well or conduct oil and gas production operations, the bonding requirement provided for in section 3 of this lease may be waived. Bonding for the ventilation wells are covered by the Aberdeen mine bonds.

Section 3 of the standard form federal oil and gas lease requires that "[a] bond must be filed and maintained for lease operations as required under regulations."

The Proposed O&G Leases grant the lessee the right not only to extract mine vent gas from the Gob Vents, but also "the right to build and maintain necessary improvements" on the Subject Parcels and to "remove" the mine vent gas from the Subject Parcels. In order to do so, the oil and gas lessee will have to occupy and disturb the surface of the Subject Parcels in order to construct, maintain and operate various facilities and improvements other than the Gob Vents themselves. Such improvements might include, without limitation, gathering lines, tanks, pipelines, electric transmission lines and compression facilities. Moreover, any number of accidents, causing damage to the surface estate or water resources, may occur in connection with the construction and operation of these facilities and improvements.

The regulations of the BLM, at 43 CFR § 3104.1, require oil and gas lessees to post a surety or bond in a minimum amount necessary to ensure not only the plugging of wells, but also the "reclamation" of the lease area(s), and the reclamation of any lands or surface waters adversely affected by lease operations..." As discussed above, although the lessee under the Proposed O&G Leases will extract mine vent gas only from Gob Vents and the Gob Vents themselves are covered by the Aberdeen Mine bonds, the lessee will also need to construct, operate and reclaim various associated surface facilities and improvements, such as gas gathering lines, that are not covered by the Aberdeen Mine bond. Pursuant to 43 CFR § 3104.1, bonds must be posted to ensure the reclamation of these facilities and improvements and the restoration of affected surface lands. The Proposed O&G Leases cannot be exempted from such federal bonding regulations.

Accordingly, it is neither appropriate nor legally permissible to exempt the oil and gas lessee from bonding regulations mandated by federal regulations.

#### **IV. Conclusion.**

*For the reasons stated above, Vessels protests the inclusion of the Subject Parcels in the Proposed Sale. Vessels reserves the right to supplement this protest upon appeal, if an appeal is necessary. Vessels respectfully requests and suggests that the Subject Parcels be deleted from the Proposed Sale and that the BLM consider and formulate more appropriate and legally permissible stipulations for the leasing and production of the mine vent gas at issue.*



Very truly yours,

DUCKER, MONTGOMERY, ARONSTEIN &  
BESS, P.C.

Attorneys for  
VESSELS COAL GAS, INC.

By:

  
James K. Aronstein

JKA/sjm



Exhibit "A"

Attached to letter dated February 5, 2007 to Bureau of Land Management  
Utah State Office Re: Competitive Oil and Gas Lease Sale Scheduled for February 20,  
2007/Protest of Inclusion of Parcels UTU0207-124, UTU0207-125 & UTU0207-126

VESSELS COAL GAS, INC.  
OIL & GAS LEASES:

SUBJECT LANDS:

1. Lease dated April 7, 2007 with  
Marsha M. Jensen, Trustee recorded  
June 20, 2006 as Entry 117957 in Book  
621 at Page 566 of the records of Carbon  
County, Utah. Township 12 South, Range 11 East, S.L.M.  
Section 32: All
2. Lease dated April 7, 2007 with  
Gregory F. McIntire, Trustee recorded  
June 20, 2006 as Entry 117958 in Book  
621 at Page 569 of the records of Carbon  
County, Utah. Township 12 South, Range 11 East, S.L.M.  
Section 32: All
3. Lease dated April 7, 2007 with  
Paul C. McIntire, Trustee recorded  
June 20, 2006 as Entry 117959 in Book  
621 at Page 572 of the records of Carbon  
County, Utah. Township 12 South, Range 11 East, S.L.M.  
Section 32: All
4. Lease dated August 1, 2006 with  
Scott Wallace Mathis recorded August  
15, 2006 as Entry 118889 in Book 626  
at Page 193 of the records of Carbon  
County, Utah. Township 12 South, Range 10 East, S.L.M.  
Section 34: S ½  
Section 35: S ½
5. Lease dated August 1, 2006 with  
Robert Arthur Mathis and Barbara L.  
Mathis recorded August 15, 2006 as  
Entry 118890 in Book 626 at Page 195  
of the records of Carbon County, Utah. Township 12 South, Range 10 East, S.L.M.  
Section 34: S ½  
Section 35: S ½
6. Lease dated August 1, 2006 with  
Katherine M. Reid and Arthur L. Reid  
recorded August 15, 2006 as  
Entry 118891 in Book 626 at Page 197  
of the records of Carbon County, Utah. Township 12 South, Range 10 East, S.L.M.  
Section 34: S ½  
Section 35: S ½



Exhibit "A" (continued)

VESSELS COAL GAS, INC.  
SURFACE USE AGREEMENT:

Unrecorded Surface Use Agreement  
between Vessels Coal Gas, Inc. and  
Scott Wallace Mathis dated  
August 1, 2006

SUBJECT LANDS IN CARBON CO., UT:

Township 12 South, Range 10 East, S.L.M.

Section 26: S  $\frac{1}{2}$  SW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;

S  $\frac{1}{2}$  SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;

E  $\frac{1}{2}$  SW  $\frac{1}{4}$ ;

SE  $\frac{1}{4}$ ; and

NW  $\frac{1}{4}$  SW  $\frac{1}{4}$

Section 27: E  $\frac{1}{2}$  NE  $\frac{1}{4}$ ; and

SE  $\frac{1}{4}$

Section 34: NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;

SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ ;

S  $\frac{1}{2}$  NE  $\frac{1}{4}$ ; and

S  $\frac{1}{2}$

Section 35: S  $\frac{1}{2}$  N  $\frac{1}{2}$ ;

NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;

NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ; and

S  $\frac{1}{2}$